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Secretary for  
Environmental  
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# California Regional Water Quality Control Board

## Central Valley Region

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Arnold  
Schwarzenegger  
Governor

26 November 2008

Thomas Skjelstad, General Manager  
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### **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0626, DONNER SUMMIT PUBLIC UTILITY DISTRICT, NEVADA COUNTY.**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385. The Complaint charges Donner Summit Public Utilities District (Discharger) with civil liability in the amount of **forty-nine thousand dollars (\$49,000)** for violations of Waste Discharge Requirements Order R5-2002-0088 and Cease and Desist Order R5-2002-0089. The civil liability represent **the twenty-four thousand dollars (\$24,000)** in accrued Mandatory Minimum Penalties for effluent limitation violations which occurred from 1 January 2007 through 30 September 2008 as well as a discretionary penalty of **twenty-five thousand dollars (\$25,000)** for violations of effluent and receiving water limitations. The factors considered in assessing the discretionary liability are enclosed.

Regarding the minimum penalties, on 21 July 2008, Central Valley Water Board staff issued a draft Record of Violations (ROV). On 15 September 2008, the Discharger agreed with the violations. Central Valley Water Board staff has prepared a technical memorandum adjusting the number of violations based upon further review of the effluent limitations and extended the period through 30 June 2008. This technical memorandum and revised ROV are found as attachments to the Complaint.

CWC section 13385(k) provides that, in lieu of assessing all or a portion of the mandatory minimum penalties against a publicly owned treatment works serving a small community, the Central Valley Water Board may elect to require an equivalent amount of money be spent on a compliance project if all of the following conditions are met:

- The compliance project is designed to correct the violations within five years,
- The compliance project is in accordance with the enforcement policy of the State Water Board, and
- The publicly owned treatment works has prepared a financing plan to complete the compliance project.

On 10 September 2008, the Executive Director of the State Water Board confirmed an earlier determination by State Water Board staff that the Donner Summit wastewater treatment plant was a "publicly owned treatment works serving a small community" pursuant to CWC section 13385(k)(2). The Discharger was allowed to apply previously assessed MMPs to a

compliance project as described in Administrative Civil Liability Order R5-2007-0528.

However, that compliance project does not sufficiently address the violations in the ROV for this Complaint, and therefore cannot be used to offset this penalty. If you would like the Central Valley Water Board to allow the completion of a compliance project in lieu of payment of these mandatory minimum penalties, please submit a project proposal by **30 December 2008** that incorporates the three conditions listed above. Please be aware that a compliance project cannot be authorized in lieu of payment of the discretionary civil liability.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **30 December 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting a letter describing the issues to be discussed to this office, including proposals for compliance projects under CWC section 13385(k)(2) by **30 December 2008**; or
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of the Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Spencer Joplin. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of the Complaint (**by 30 December 2008**), then a hearing will be scheduled for the **5/6 February 2009** Central Valley Water Board meeting in Rancho Cordova. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Spencer Joplin, **no later than 5 p.m. on 30 December 2008**. This includes material submitted by the discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Central Valley Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed

Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 30 December 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

To claim an inability to pay this Administrative Civil Liability Complaint, the Discharger must submit a statement of financial conditions by **30 December 2008** that substantiates its claim.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Regional Water Board's Internet website at

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/). Copies of these documents can also be obtained by contacting or visiting the Regional Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Patricia Leary at (916) 464-4623.

WENDY WYELS

Environmental Program Manager

Compliance and Enforcement Section

Enclosure: Factors Considered in Assessing Liability  
ACL Complaint R5-2008-0626

cc w/o encl: Ms. Pamela Creedon, Executive Officer  
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco  
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento  
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova  
Nevada County Department of Environmental Health, Nevada City  
Mr. Bill Jennings, California Sport Fishing Protection Alliance, Stockton  
Robert Emerick, ECO:LOGIC Engineering, Inc., Rocklin  
Robert Coats, Hydroikos Ltd, Berkley  
Tom Hendrey, Whitley, Burchett, and Associates, Walnut Creek  
Bill Oudegeest, Serene Lakes Homeowners' Association, Modesto  
Jason Rainey, South Yuba River Citizen League, Nevada City  
Peter Van Zant, Sierra Watch, Nevada City  
John Eaton, Truckee  
Kathryn Gray, Palo Alto  
Frank and Sue Grigsby, Soda Springs  
Susan Snider, Nevada City  
Linda Waddle, Auburn

cc by email: Vance Anderson  
Anthony Bachman  
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Mike Basich  
Robert Baxter  
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Wade Freedle  
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CIWQS Violation 778681, 777093

## **Factors Considered in Assessing Discretionary Liability**

### **ACL Complaint R5-2008-0626**

#### **Nature and Circumstances**

In 2002, the Central Valley Water Board adopted WDRs R5-2002-0088 to regulate discharges of treated wastewater from the Donner Summit Public Utility District (PUD) WWTP. Donner Summit PUD could not immediately comply with the ammonia and nitrate effluent limitations contained in WDRs R5-2002-0088, so the Central Valley Water Board adopted CDO R5-2002-0089, which provided a time schedule to comply with the effluent limitations by April 2007. Donner Summit PUD has continued to violate the nitrate effluent limitations in WDRs R5-2002-0088 after the April 2007 compliance date, documenting that the upgraded facility is not capable of reliably removing nitrate from the wastewater. The nitrate concentrations in the effluent have contributed to algae growth and bio-stimulation in the receiving water downstream of the discharge. The algae growth violated the receiving water limitation requiring that the discharge not cause fungi, slimes, or other objectionable growths during June 2008. A significant number of citizens have complained about the algae growth, supporting that the condition caused a nuisance.

#### **Extent**

Donner Summit PUD discharges wastewater seasonally to the South Yuba River. Between April 2007 and September 2008, wastewater was discharged to the River for all but three months (mid-July to mid-October). Over those 15 months of discharge, Donner Summit PUD reported eight nitrate effluent limit violations. In addition, Staff observed significant algae growth downstream of the discharge in June 2008, supporting that the discharge periodically causes algae blooms that are objectionable for some distance downstream from the outfall for the facility.

#### **Gravity/Toxicity**

The discharge of nitrate in excess of the effluent limitation (10 mg/l) exceeds the drinking water MCL and could pose a human health risk if consumed. The discharge also caused objectionable growth of algae in the headwaters of a high Sierra stream, resulting in significant numbers of complaints from residents in the area. The concentration of nitrate is not likely to have been toxic to aquatic life.

#### **Susceptibility of the Discharge to Cleanup**

Once discharged to receiving waters, the discharge is not susceptible to cleanup. The only way to prevent further violations from the discharge would be for the facility to be upgraded to remove the constituents while undergoing treatment. Donner Summit PUD asserts they experience difficulty in nitrifying and denitrifying in cold temperatures and high altitudes. However, a review of case files for other dischargers located at high altitudes within the Sierra Nevada mountains finds that they have succeeded in fully nitrifying and denitrifying wastewater under similar conditions.

#### **Ability of the Discharger to Pay**

State Water Board staff determined Donner Summit PUD to be a small community with financial hardship on 4 September 2008. Central Valley Water Board staff have taken this fact into account in determining the amount of the discretionary liability.

**Voluntary Cleanup Efforts**

The Discharger's response and cleanup efforts have been marginal. The Discharger proposes to address the nitrate violations by studying the effect on the South Yuba River.

**Prior History of Violations**

Donner Summit PUD accrued \$204,000 in mandatory penalties for violations of effluent limitations from January 2000 to December 2006, and Central Valley Water Board staff issued ACL Order R5-2007-0528 for these violations. The assessment did not include violations for ammonia and nitrate, because the final limitations were not in effect at that time. Because the wastewater treatment plant serves a small community with a financial hardship, the Discharger was allowed to apply the penalty to the recently completed compliance project to upgrade the facility.

**Degree of Culpability**

Donner Summit PUD owns the WWTP and is solely responsible for its discharges and their effects. The Discharger did not upgrade its wastewater treatment plant adequately to allow it to reliably comply with effluent and receiving water limitations.

**Economic Benefit**

Donner Summit PUD spent over \$4 million to upgrade its wastewater treatment plant to comply with CDO R5-2002-0089 and to address the previous MMP violations. Unfortunately, Donner Summit PUD's project does not perform well enough to comply with the nitrate effluent limitations and therefore Donner Summit has gained an economic benefit by delaying an engineering solution. The economic benefit is considered to be the deferred cost of implementing the project; more specifically, the delay in paying the interest on a loan to complete the work. While the cost to complete additional upgrades to comply with the nitrate effluent limit is unknown, staff have determined that the delayed cost for a \$500,000 State Revolving Fund loan over the period of noncompliance would be approximately \$21,000. Therefore, the economic benefit is estimated to be less than the discretionary penalty amount.